

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TODD FENER,)	No. 04-cv-12375-RCL
)	
Plaintiff,)	<u>CLASS ACTION</u>
)	
vs.)	
)	
ASPEN TECHNOLOGY, INC., et al.,)	
)	
Defendants.)	
)	
RICK STOCKMASTER, Individually and On Behalf of All Others Similarly Situated,)	No. 04-cv-12387-RCL
)	
Plaintiff,)	<u>CLASS ACTION</u>
)	
vs.)	
)	
ASPEN TECHNOLOGY, INC., et al.,)	
)	
Defendants.)	
)	

OPERATING ENGINEERS CONSTRUCTION INDUSTRY AND MISCELLANEOUS PENSION FUND (LOCAL 66) AND CITY OF ROSEVILLE EMPLOYEES' RETIREMENT SYSTEM'S NOTICE OF NON-OPPOSITION TO THEIR MOTION FOR CONSOLIDATION, APPOINTMENT AS LEAD PLAINTIFF AND FOR APPROVAL OF LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL

On January 10, 2005, within 60 days of the publication of notice in this case on *Business Wire* on November 9, 2004, Operating Engineers Construction Industry and Miscellaneous Pension Fund (Local 66) and City of Roseville Employees' Retirement System ('Operating Engineers Group') timely filed the only Motion for Consolidation, Appointment as Lead Plaintiff and Approval of Lead Plaintiff's Selection of Lead and Liaison Counsel (the "Motion") pursuant to the Private Securities Litigation Reform Act of 1995 ('PSLRA').

The Operating Engineers Group respectfully submits this Notice of Non-Opposition to inform the Court that the Motion is unopposed. *See Local Rule 7.1(a)(2) Certification* (filed on January 10, 2005). In addition to timely filing the only lead plaintiff motion in this case, the Operating Engineers Group (i) has the largest financial interest in the relief sought by the class; (ii) satisfies Federal Rule of Civil Procedure 23; and (iii) typifies the sort of institutional investor Congress hoped would serve as lead plaintiff in securities class actions such as this. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 268 (3d Cir. 2001) (institutional investors, like the Operating Engineers Group, satisfy the requirements of Rule 23).

Accordingly, pursuant to the PSLRA, the Operating Engineers Group is the "most adequate plaintiff" to lead this litigation on behalf of the class, and its selection of lead and liaison counsel should be approved. *See 15 U.S.C. §78u-4(a)(3)(B)(iii); In re Sprint Corp. Sec. Litig.*, 164 F. Supp.

2d 1240, 1242 n.2 (D. Kan. 2001) (granting unopposed lead plaintiff motion); *Greater Pa. Carpenters Pension Fund v. Adolor Corp.*, 2004 U.S. Dist. LEXIS 26205 (E.D. Pa. Dec. 29, 2004) (same).

DATED: January 25, 2004

Respectfully submitted,

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THEODORE M. HESS-MAHAN (BBO #557109)

/s/ *Theodore M. Hess-Mahan*

THEODORE M. HESS-MAHAN

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by mail on 1/25/05.

/s/ *Theodore M. Hess-Mahan*

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